STATE OF MICHIGAN

COURT OF APPEALS

CALEB GRIFFIN,

Plaintiff-Appellant,

v

SWARTZ AMBULANCE SERVICE,

Defendant-Appellee,

and

SARAH ELIZABETH AURAND,

Defendant.

UNPUBLISHED
November 29, 2018

No. 340480
Genesee Circuit Court
LC No. 14-103977-NI

Before: M. J. KELLY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition in favor of defendant Swartz Ambulance Service for the alleged negligence of its driver, Mary Shifter, who was involved in an accident while transporting plaintiff to a hospital for medical treatment. The trial court determined that defendant was immune from liability under MCL 333.20965(1), which is part of the emergency medical services act (EMSA), MCL 333.20901 *et seq*. We affirm.

In 2012, plaintiff was involved in an automobile accident in which he sustained a leg injury, including a dislocated knee. One of defendant's ambulance units responded to the scene and began transporting plaintiff to the hospital. On the way to the hospital, the ambulance collided with a vehicle driven by Sarah Aurand. A second ambulance then transported plaintiff to the hospital.

Plaintiff filed this action against Aurand and defendant,[1] alleging, in pertinent part, that defendant's employee, Mary Shifter, a licensed emergency medical technician (EMT) and the

[1] The singular term "defendant" will be used to refer to defendant Swartz Ambulance Service.

driver of defendant's ambulance, was negligent in causing the second accident, that this negligence delayed plaintiff's treatment for his original injury, and that the delay in treatment resulted in a portion of plaintiff's leg being amputated. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it was immune from liability pursuant to MCL 333.20965(1), which establishes immunity for EMTs and other medical first responders who provide services in the treatment of a patient absent a showing of gross negligence or willful misconduct. Defendant argued that plaintiff's allegations and evidence established, at most, that Shifter was negligent; therefore, it was immune from liability under the EMSA. The trial court agreed and granted defendant's motion. Plaintiff later agreed to dismiss her negligence claim against Aurand. Plaintiff now challenges the trial court's order granting summary disposition in favor of defendant.

We review a trial court's summary disposition decision de novo. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the plaintiff's complaint by the pleadings alone. *Id*. All well-pleaded factual allegations in the complaint are taken as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). Summary disposition should be granted only if the claims are so clearly unenforceable as a matter of law that no factual development could justify recovery. *Id.* In contrast, a motion under MCR 2.116(C)(10) tests the factual support for a claim. *Spiek*, 456 Mich at 337. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties, and view that evidence in a light most favorable to the non-moving party. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The proper interpretation of a statute is a question of law, which this Court reviews de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

At issue is whether the grant of immunity established under the EMSA applies to the alleged negligence of defendant's ambulance driver, Shifter, with respect to her operation of the ambulance while transporting plaintiff to a hospital for treatment. Resolution of this question requires this Court to interpret and apply the EMSA. As explained in *Dressel*, 468 Mich at 562:

> It is the cardinal principle of statutory construction that courts must give effect to legislative intent. When reviewing a statute, courts must first examine the language of the statute. If the intent of the Legislature is clearly expressed by the language, no further construction is warranted. [Citations omitted.]

If a statute's language is clear and unambiguous, this Court assumes that the Legislature intended its plain meaning, and the statute will be enforced as written. *Omelenchuk v City of Warren*, 466 Mich 524, 528; 647 NW2d 493 (2002). "In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory." *Id*. (citation and quotation marks omitted). Judicial construction of a statute is only permitted when the statute is ambiguous. *Noll v Ritzer*, 317 Mich App 506, 511; 895 NW2d 192 (2016). An ambiguity exists when a term is equally susceptible to more than one meaning or there is an irreconcilable conflict with another provision. *Id.*

MCL 333.20965 provides, in relevant part:

> (1) Unless an act or omission is the result of gross negligence or willful misconduct, *the acts or omissions of a medical first responder, emergency medical technician*, emergency medical technician specialist, paramedic, medical director of a medical control authority or his or her designee, or, subject to subsection (5), an individual acting as a clinical preceptor of a department-approved education program sponsor while providing services to a patient outside a hospital, in a hospital before transferring patient care to hospital personnel, or in a clinical setting that are consistent with the individual's licensure or additional training required by the medical control authority including, but not limited to, services described in subsection (2), or consistent with an approved procedure for that particular education program *do not impose liability in the treatment of a patient on those individuals or any of the following persons*:
>
> * * *
>
> (d) The life support agency or an officer, member of the staff, or other employee of the life support agency. [Emphasis added.]

MCL 333.20906(1) defines "life support agency" to mean "an ambulance operation, nontransport prehospital life support operation, aircraft transport operation, or medical first response service." Thus, MCL 333.20965(1)(d) extends the immunity granted by the act to an ambulance service, such as defendant. In addition, among the persons entitled to immunity under MCL 333.20965(1) are EMTs and "medical first responder[s]." A "[m]edical first responder" is defined in MCL 333.20906(8) as

> an individual who has met the educational requirements of a department approved medical first responder course and who is licensed to provide medical first response life support as part of a medical first response service *or as a driver of an ambulance that provides basic life support services only*. Medical first responder does not include a police officer solely because his or her police vehicle is equipped with an automated external defibrillator.

Although the definition of medical first responder indicates that an ambulance driver may qualify for immunity under the EMSA, it is still necessary to determine whether Shifter's operation of the ambulance in this case qualifies as conduct involving "the treatment of a patient" within the meaning of MCL 333.20965(1). Plaintiff argues that defendant is not entitled to immunity because Shifter's operation of the ambulance, a motor vehicle, did not involve "the treatment of a patient."

Preliminarily, we note that prior decisions of this Court have distinguished between emergency and nonemergency situations in analyzing the scope of immunity available under the EMSA. See, e.g., *Knight v Limbert*, 170 Mich App 410; 427 NW2d 637 (1988) (applying a former version of the EMSA and holding that the EMSA did not apply when the plaintiff was a nonemergency patient who was being transferred to another hospital in an ambulance under nonemergency circumstances). Plaintiff notes that the ambulance's siren and flashing lights

were not activated at the time of the accident, indicating that the ambulance was being driven in a nonemergency manner. But MCL 333.20965(1) does not distinguish between emergency and nonemergency situations. In addition, MCL 333.20908(6) defines a "patient" as "an emergency patient or a nonemergency patient." This definition indicates that the "treatment of a patient" under MCL 333.20965(1) may encompass treatment to a patient in a nonemergency. Viewed together, MCL 333.20908(6) and MCL 333.20965(1) plainly do not impose a condition that only services offered by first responders in emergency situations are entitled to immunity.

Because MCL 333.20965(1) does not define the term "treatment," we may consult dictionary definitions to determine the ordinary meaning of the term. *Koontz v Ameritech Servs*, 466 Mich 304, 312; 645 NW2d 34 (2002). The *Merriam-Webster's Collegiate Dictionary* (11th ed) defines the term "treatment," in relevant part, as follows:

> **a:** the act or manner or an instance of treating someone or something: HANDLING, USAGE <the star requires careful ~ > **b**: the techniques or actions customarily applied in a specified situation.

Under this definition, the term "treatment" would include the handling of a patient in an ambulance or techniques customarily applied when caring for ambulance patients, consistent with the training of first responders. Thus, "treatment" would not be limited to actual medical services rendered to patients being transported by ambulance but would include activities by first responders acting within the scope of their duties and training as first responders.

We believe that the immunity afforded by MCL 333.20965(1) applies to Shifter's operation of the ambulance as a motor vehicle in this case where the operation was serving the needs of plaintiff, a patient seeking immediate medical care. Plaintiff was being transported from an accident site to a hospital to receive immediate medical treatment for an injury. According to Shifter and her partner, plaintiff's hospital run was considered a "Priority 2" run, meaning they wanted to get to the hospital as quickly as possible, even though the lights and siren were not activated. In this context, the term "treatment" can reasonably be construed as including the safe and timely transportation of the patient to the hospital to receive medical care. The evidence showed that (1) Shifter was a medical first responder or EMT who was part of the defendant's ambulance staff; defendant is a life-support agency; (2) defendant was providing emergency services to plaintiff when the collision occurred, and (3) the collision occurred while plaintiff was being transported to the hospital for prompt medical care. We conclude that under these circumstances, Shifter's operation of the ambulance at the time of the second accident qualifies as conduct involving "the treatment of a patient" within the meaning of MCL 333.20965(1). Accordingly, the trial court did not err by granting defendant's motion for summary disposition.

We affirm. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ David H. Sawyer
/s/ Jane E. Markey